

HONG KONG / JUDGMENT

BETWEEN LSSD v. CWY

COURT

Family Court

DECIDED

5 September 2013

CASE / FILE NUMBER

FCMC1182/2000

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bjbj FCMC 1182/2000 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION MATRIMONIAL CAUSES NO. 1182 OF 2000

BETWEEN LSSD Petitioner and Respondent

Coram: HH Judge C.K. Chan in Chambers (Not Open to Public) Dates of Hearing: 29-30, 2-3 May
2013 Date of Respondent's Final Submission: 24 May 2013 Date of Petitioner's Supplemental Final
Submission: 6 June 2013 Date of Judgment: 5 September 2013

J U D G M E N T (VARIATION OF MAINTENANCE)

This is a hearing of the Petitioner (the wife's application for an upward variation of her and the
daughter's maintenance currently payable by the Respondent (the husband). Despite the fact
that evidence was heard in Chinese, I have decided to hand down this Judgment in English as all
the pleadings and submissions were primarily prepared in that language.

Background

The parties married in 1991. Within wedlock, a daughter () was born who is now aged 18. The
parties separated in 1998. The wife issued a petition for divorce on 1 February 2000. A decree nisi
of divorce was granted on 12 July 2000, which was later made absolute on 28 August 2000. For the
custody of S, this court granted an order by consent on 12 July 2000 that the wife should have the
sole custody of S with reasonable access to the husband. On the same day, the court also granted
the following orders for ancillary relief:

- (1) The former matrimonial home and the family car to be sold and the net proceeds of sale to
be divided up between the parties in equal shares.

- (2) The husband shall pay nominal maintenance at the rate of \$1 per annum in favour of the wife.
- (3) The husband shall pay a monthly sum of \$5,000 as maintenance for S. It is common ground that the terms of the order have been complied with by the parties. On 20 June 2012, the wife issued a Notice of Application for Ancillary Relief and asked for an upward adjustment of the nominal maintenance order in her favour and also the maintenance order of S. As the parties failed to reach any agreement at the call over hearings, the case was therefore adjourned to today for trial. The Parties Respective Positions It will be useful to set out the parties respective positions right at the beginning. The wife is now claiming for:
- (1) The nominal maintenance order in her favour to be increased to a monthly sum of \$30,000, such sum to be further increased annually by 5% starting from the second year of the order.
- (2) Based on the undertakings of the husband (which are agreed) for the payment of the followings until the daughter completes her first degree of university education or before the fall of 2018, whichever is earlier (the husband s undertakings):
- (i) School fees; (ii) School books; (iii) Annual medical insurance; (iv) One single round trip air ticket each year, the maintenance for the daughter to be increased to CAD 6,500 per month, such sum to be further increased annually by 5% starting from the second year of the order.
- (3) Reimbursement of the sum of \$172,716.18, being S s maintenance calculated on the increased rate of maintenance (being \$263,716.18) less the sum already paid by the husband (being \$91,000) for the period between December 2012 and March 2013. The husband opposes the applications. When giving evidence in court, the husband did not dispute that he was in a financial position to pay the amount of maintenance as claimed by the wife for herself and S. Therefore, it became unnecessary to have a detailed discussion on his means. However, it was his primary case that the wife had not made good the claim for an increase in her own maintenance. But without prejudice to this primary case of the husband, he still offers to pay periodical maintenance to the wife at the rate of \$18,000 per month, but for a period of 5 years only. As for the maintenance of S, the husband agrees that there should be an increase in the daughter s maintenance but not at the rate as claimed by the wife. Apart from the husband s undertakings, he now offers to pay CAD 1,400 per month as the daughter s maintenance, up to the completion of her first degree or the end of May 2018, whichever is earlier. There was no dispute from the wife as to the payment period of S s maintenance. As for the claim for reimbursement of expenses between December 2012 and March 2013, the husband is only willing to pay a sum of \$5,455. The Legal Principles The Court s power to grant an order for variation is governed by s11 (1) and (7) of the Matrimonial Proceedings and Property Ordinance, Cap.192 (MPPO) which provides as follows:
11. Variation, discharge, etc. of orders for financial provisions

- (1) Where the court has made an order to which this section applies, then, subject to the provisions of this section, the court shall have power to vary or discharge the order or to suspend any provision thereof temporarily and to revive the operation of any provision so suspended. .
- (7) In exercising the powers conferred by this section the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order to which the application relates and, where the party against whom that order was made has died, the changed circumstances resulting from his or her death. According to the said provision, the court, in considering such an application for variation, has to consider all the circumstances of the case and in particular, any changes in the matters to which regard has been made in reaching the original order. In the case of *AEM v. VFM* , Cheung JA has explained the modern approach in dealing with such an application at paras 14.4-8 of the Judgment:
4. The modern approach, as required by section 11(7), is for the Court to consider all the circumstances of the cases. The Court is not required to proceed from the starting point of the original order but look at the matter afresh: *Flavell v. Flavell* [1997] 1 FLR 353 at 357B following *Lewis v. Lewis* [1977] 1 WLR 409 and *Garner v. Garner* [1992] 1 FLR 573.
5. Any change in any of the matters to which the Court was required to consider when making the original order was one of the circumstances to be considered.
6. Almost invariably, an application to vary an earlier periodical payment order will be brought on the basis that there has been some changes in the circumstances since the original order was made, for example, continuing inflation; the increased costs in supporting a growing child and that one party may be more adversely affected than another by the increase in the costs of living: *Garner v. Garner*.
7. An increase in the wealth of the husband was a relevant factor to be taken into account: *Primavera v. Primavera* [1991] 1 FLR and *Cornick v. Cornick (No. 2)* [1995] 2 FLR 490.
8. At the same time the basis and intended effect of the original order are relevant factors to which the Court on variation should pay regard and there should not be a radical departure from the approach taken by the parties themselves when they had entered into an agreement embodied in a consent order: *Boylan v. Boylan* [1988] FLR 282. As to the weight to be attached to the original order, Tang VP (as he then was) said in the case of *HCTT v. TYVC* [2008] 5 HKC 86 at paras 15-16:
15. But as *Garner v. Garner* [1992] FLR 573 shows that does not mean that the earlier order, whether made by consent or not, carries no weight. How much weight should be given to the earlier order must depend on the circumstances. Cazalet J said in the English Court of Appeal: Almost invariably, an application to vary an earlier periodical payment order will be brought on the basis that there has been some change in the circumstances since the original order was made; otherwise, except in exceptional circumstances, the application

will, in effect, be an appeal. If an order is not appealed against, or is made by consent, then the presumption must be that the order was correct when made. If it was correct when made, then there will usually be no justification for varying it unless there has been a material change in the circumstances. However, because of the impact of continuing inflation, because children grow older and cost more to support and because, for example, the cost of living in its increase may hit one party harder than another, it will usually follow that, if time has passed, there will inevitably have been changes in the circumstances, of the parties concerned. Following *Lewis v. Lewis*, by which decision this court is bound, a court on the hearing of an application to vary is fully entitled to look at all the relevant matters set out in s.25 of the Matrimonial Causes Act 1973. On occasions, the court may be slow to accede to an application to vary a consent order; not least because the parties solicitors might otherwise be deterred from either seeking to negotiate such a provision or to achieve finality. Another factor which may influence a court will be the time that has passed since the original order was made. If an application consequent on an order is brought very soon after that order has been made, the court, in normal circumstances, is likely to attach more weight to the earlier order than if it had been made some years previously. Likewise, the court would expect to pay full regard to any special terms agreed between the parties at the time the original order was made- as, for example, when endorsements on briefs or contemporaneous correspondence show that an agreed order has, for some particular reason, been set at an artificially low figure. Shortly stated, the court must decide what weight it should attach to the original order and all the surrounding circumstances. However, once an application to vary is before it, the court is fully entitled to make an order considering all the circumstances afresh, paying such regard to the older order as may be appropriate. Thus, although the jurisdiction to vary is untrammelled, normally the earlier order would not be varied unless there has been a material change in the circumstances.

18. I shall bear the above principles in mind when I come to consider the facts of this case.

Issues

After hearing the parties evidence in court, these are the issues to be resolved by this court:

- (1) The financial circumstances of the wife;
- (2) The reasonable needs of the wife;
- (3) The reasonable needs of S; and
- (4) The reasonable amount of reimbursement payable by the husband. The Financial Circumstances of the Wife The Wife's Income The wife is now aged 45. She has all along been operating her sole proprietary business under the name of . However, due to the deterioration of her health and business, there has been a significant decrease in the income generated from the business and therefore, necessitating the present application for an increase in her maintenance. According to the wife, she has Beta-thalassemia trait since May 1998 and was further diagnosed to have cervical spondylosis in April 2012. The latter s

symptoms include neck pain making her less able to continue her present business of providing massage and beauty treatments to clients. As a result, the company's turnovers in the years of 2011 and 2012 have decreased to \$248,435 and \$230,696 respectively, as compared to \$605,180 and \$510,854 in the respective years of 1999 and 2000. The wife's annual net income for the years of 2011 and 2012 were \$80,341 (about \$6,695 per month) and \$21,094 (\$1,757 per month) only. The Husband's Challenge The husband is of the view that the so called neck pain of the wife is only a mild ailment and should not have affected her earning capacity substantially. He said the wife could only produce a handful of physiotherapist receipts indicating that her neck pain should not have been too serious. Thus, it is the submission of the husband that the wife has failed to make good her case that her neck ailment is of such severity that it hindered her ability to work. My View I note that the wife had produced some documents trying to prove her present medical conditions. In a memo issued by a Dr. Wong (A2/487), it was stated that the wife has suffered from on and off neck pain for about 2 years. The diagnosis was cervical spondylosis. It was further stated that the wife had also suffered from on and off right side abdominal pain for about 2 years and the clinical diagnosis was musculoskeletal pain of right side abdominal wall. At the end of the memo, it was stated that: Both neck and abdominal pain might affect the working capacity of [the wife]. One would see that although the memo from Dr Wong did say that the wife was suffering from some forms of neck and abdominal pain, it was not certain how those pains would have an impact on the wife's earning capacity. Therefore, although I am inclined to accept that the wife is suffering from some forms of neck and abdominal pains which might have some adverse effect on her work, I am not satisfied that they have made the wife to have lost all her earning capacity. The wife is now 45 years of age. That is not a very old age. The parties have separated for 15 years and it would be unrealistic for her to expect the husband to provide for all her needs in the years to come. Despite the fact that the wife might not have received very high education, I am convinced that she still would have some earning capacity in the recent robust labour market. Although there was not much evidence on what sorts of job that would be available to the wife even if she decided not to continue with her present business, and doing the best as I could, I would venture to say that the wife should have at least a capacity to earn a monthly income of about \$6,000 by reference to the present minimum wage of \$30 per hour. Therefore, I would treat the wife as having an earning capacity of at least \$6,000 per month. The Wife's Assets According to the wife, her total assets amount to about \$2,900,000 which is mainly made up of a residential apartment (about \$2,700,000 net), some bank accounts and shares. On the other hand, she also has debts of about \$400,000 which include credit card debts, maintenance to apartment, personal loans from relatives and daughter. The details of those assets and debts will not be listed here because they were not seriously challenged by the husband, except for 2 items. First, it was about the net value of the wife's residential apartment. From the latest valuation provided by the husband, I am satisfied that the present market value of the flat is about \$4,900,000 (C/176) and after deducting the first and second mortgages of about \$800,000 and \$400,000 respectively, I am satisfied that the net value of the flat is about \$3,700,000, instead of \$2,700,000 as proposed by the wife. The second item concerns with the loan of \$100,000

from the daughter. According to the wife, as she was unable to provide for the daughter's education and living expenses in Canada, she had made use of the daughter's red packet money which was kept by her all these years. I reject this as a genuine debt owed to the daughter because firstly, this \$100,000 is only an estimate and there is no evidence to prove the existence of the exact sum. Secondly, even if the daughter did have some money deposited with the wife as red packet money or otherwise, if that money was later used for the daughter's benefit, she was only using her own money for her own benefit. Under those circumstances, I do not regard this as a loan to the wife. After deducting this \$100,000 from the wife's debt, I am satisfied that she does have a debt in the sum of about \$300,000. In other words, I do accept the wife as having net assets in the sum of about \$3,600,000 (\$3,900,000 - \$300,000 = \$3,600,000) which is mainly made up of an equity in her residential apartment. The Reasonable Needs of the Wife According to the wife, her monthly expenses are as follow: General Household Expenses Mortgage repayment \$9,022 Public utilities \$2,700 Management fee \$1,410 Household expenses \$1,400 Insurance of home \$113 \$14,645 Personal Expenses Food Dining out Transport Clothing/shoes Personal grooming Entertainment Part-time maid \$10,000 Medical Expenses/Tonic Food Physiotherapy/medical \$5,000 Tonic food/Chinese medicine \$2,000 \$7,000 Total: \$31,645 The Husband's Challenges During the hearing, the husband did raise challenges to some of the above items. Mortgage Repayments The husband said that the net equity of the wife's apartment is about \$3,700,000 and she could therefore change to a smaller flat so as to reduce her mortgage repayments. My View There was no evidence on whether it was feasible for the wife to make such a move. Furthermore, despite S may resume her studies in Canada after the summer vacation, there is still a need for the wife to maintain a decent flat so as to accommodate S for her stay in Hong Kong during summer vacations. Therefore, I am not convinced that it is reasonable to expect the wife to move out of her present accommodation. Having said the above, I also have to take into account of the fact that the wife's mortgage repayments will in some way contribute towards her capital accumulation, which I believe should not be the duty of the husband. Therefore, in order to strike a fair balance, I would reduce the husband's liability towards the wife's accommodation expenses to half of that sum, i.e. \$4,500. Physiotherapy/ Medical Expenses/Tonic Food

35. It was the wife's case that she was spending \$5,000 per month on physiotherapy and medical expenses. Counsel for the husband pointed out the fact that on 17 April 2013, the wife suddenly produced a bunch of 10 receipts for physiotherapy treatment for the period from 8 February 2013 to 15 April 2013. At the same time, she also produced 9 receipts for Chinese massage for the same period of time. In other words, she had received treatments in the form of physiotherapy or massage for her neck pain for 19 times during a relatively short period of about 2 months. On average, 2 treatments per week. The total costs for those treatments amounted to \$6,959. She had also received treatment at a Chinese Medicine Clinic 5 times for dizziness costing her \$1,397. There was another consultation with a Dr. Wong for \$100 but without any diagnosis being stated on the receipt. Therefore, the total amount spent was about \$8,500 for that 2 month period. Counsel queried on why such a

pattern of intensive medical treatment did not appear before April 2013 and therefore casting a doubt on the genuineness of those treatments. My View As I see it, the frequency of the wife s treatment could only be justified if she was indeed suffering from a very serious medical condition. However, as I can see from the medical evidence produced so far, I cannot be satisfied that she was in such a precarious medical condition. By considering the evidence of the wife as a whole, I would accept that she was suffering from some form of neck pain justifying her need for treatment, but not at the frequency as claimed. I would reduce her claim of \$7,000 by half and allow her a sum of \$3,500 only. Other Expenses The husband also raised a challenge to some of the other items of the wife s expenses including household expenses, dining out, clothing/shoes, personal grooming, entertainment and part time maid in the sum of about \$10,000 per month. After considering all the expenses in the round, I do not think they are excessive in the circumstances. The Wife s Monthly Reasonable Expenses Based on the above discussion, I am satisfied that the monthly reasonable expenses of the wife amount to \$23,623, rounded up to the sum of \$24,000 for the ease of calculation. Amount of Periodic Payment to be made

39. As I have ruled that the wife should have earning capacity of at least \$6,000 per month, therefore, I am of the view that the proper level of periodic payment for the wife should be set at \$18,000 ($\$24,000 - \$6,000 = \$18,000$). Length of Periodic Payment As to the length of the periodic payment to the wife, I note that the parties have already separated for over 15 years (since about 1998) and I think it is unreasonable to expect the husband to cater for the wife s needs for an indefinite period of time. The wife has to accept the fact that at sometime in the future, she has to stand on her own feet instead of relying on the financial assistance provided by the husband. I agree that a 5 year period would be a reasonable period for the wife to re-establish herself and hopefully by that time, S should have completed her tertiary education and she would be in a position to give financial assistance to the wife, if necessary. Therefore, I would order the husband to pay a monthly sum of \$18,000 as the wife s maintenance for a period of 5 years from the date of this judgment. I accept that a 5% increase per annum would give sufficient protection to the wife from inflation and I so order. The Maintenance for S As for the maintenance for S, the parties respective positions are that the wife asked for a monthly sum of CAD 6,500 while the husband only agreed to pay CAD 1,400. The only agreement was that such payment would cease upon S obtaining her first degree from university, or at the end of May 2018, whichever is earlier. S s Reasonable Needs S is now aged 18, studying at a college in Vancouver, Canada for an university transfer program. It is anticipated that she would be transferred to the first year of an university degree sometime in 2014 and therefore, graduating sometime in 2018. The most updated expenses of S were set out in the wife s counsel s final submissions as follows:
- | Items | Amount |
|-------------------------------|------------|
| Rent (inclusive of utilities) | CAD 1,700 |
| Food | CAD 1,000 |
| Transport | CAD 100 |
| Household expenses | CAD 250 |
| Pocket money | CAD 600 |
| Medical service plan | CAD 66.50 |
| Holidays | CAD 400 |
| Personal grooming | CAD 150 |
| Telephone/internet charges | CAD 116.31 |
| Mobile fee | CAD 81.68 |
| Entertainment/presents | CAD 100 |
| English lessons | CAD 480 |
| French lessons | CAD 360 |
| Rental fee for piano | CAD 60 |
| Piano lesson | CAD 336 |
| Miscellaneous | CAD 100 |

Driving lessons CAD 450 Total: CAD 6,350.49 The Husband's Challenges It is the general case of the husband that the maintenance as claimed on behalf of S is far too extravagant for a student. If one should adopt an exchange rate of say, 1: 7.40, the claim for S's maintenance would be HK\$ 48,100 (CAD 6,500 x 7.40 = HK\$ 48,100), bearing in mind that these are only S's living expenses in addition to the husband's undertakings for school fees and other expenses. In this regard, I do share some of the concerns of the husband.

Rent, Food and Household Expenses It is the wife's case that S is now residing in a flat near to the college and pays CAD 1,700 as rent including utility charges. During cross examination, it was pointed out to the wife that the flat in which S was staying measured about 929 sq ft with 2 bedrooms and 2 car parks (B/1262). The husband argues that S can stay with a home stay family which will cost considerably less. I find the wife's explanation that she was not aware of the option of home stay not particularly convincing. I agree with the husband that the flat rented by the wife for S was simply too big for a 18-year student. There was really no need for S to stay in a 2 bedroom flat with 2 car parks, especially when she did not even have a driving license. I agree that staying with a home stay family would be more suitable. According to the information provided by the husband (B/1264), the monthly home stay fee would be about CAD 750 (which would include 3 meals per day) plus some other one off expenses like the placement and pick-up fees. Therefore, I would allow a monthly sum of CAD 1,000 as S's reasonable accommodation expenses taking into account of the other miscellaneous charges. As the home stay fee would include 3 meals a day already, I would therefore cut down S's claim for meals (CAD 1,000) and household expenses (CAD 250) to a single sum of CAD 500 only to cater for extra food to be consumed by S. The wife argues that it is now too late to change to home stay because the tenancy has already been entered into. Furthermore, it is her case that it is within the husband's means to pay the rent of CAD 1,700. I am fully aware that the husband's ability to pay is not an issue. What is in issue is whether the amount claimed is reasonable under the circumstances of the case. I have already found that it was not reasonable for S to rent such a flat on her own and I am afraid that the wife has to bear the undesirable consequences of such an adverse finding.

Therefore, it is more important and sensible for the parties to consult each other in the future and to find a mutually acceptable solution to their disagreement or otherwise, they would run the risk of facing such an undesirable situation should the court not finding the case in their favour in a full blown litigation.

English and French Lessons It is the case of the wife that she is now spending CAD 480 and CAD 360 for S's English and French lessons. The husband's case is that those expenses are actually unnecessary. I understand that S was not particularly successful in her Hong Kong examinations and I suppose that was one of her reasons to further her studies in Canada. I accept that S would be in need of additional help in her languages. I also accept that as S is a Canadian citizen having the aspiration of entering the Canadian civil service after graduation, the learning of French becomes a necessity. However, I do not think it is reasonable for S to have those extra language lessons during the whole course of her tertiary education up to 2018, especially for English. Therefore, I will only allow half of the claim for tuition fees in English.

Pocket Money, Holidays, Personal Grooming and Entertainments/Presents It is the case of the wife that S is

spending CAD 600 for pocket money, CAD 400 for holidays, CAD 150 for personal grooming and CAD 100 for entertainment/presents. All these amount to a total sum of CAD 1,250. The husband argues that these expenses are certainly too high for a student. I have no difficulty with the sums of CAD 150 for personal grooming and CAD 100 for entertainment/presents. However, I do share the husband's concerns that CAD 600 for pocket money and CAD 400 for holidays are too high for a 18-year old student. I would reduce that to half, i.e. CAD 300 for pocket money and CAD 200 for holidays.

Piano Lessons The wife claims for a monthly sum of CAD 336 for S's piano lessons. The husband argues that as S has already attained Grade 8 in piano, there is no reason for her to continue piano lessons in Canada. I accept that S has such a desire to continue her piano lessons in Canada, which I find not unreasonable in the circumstances of this case, I would therefore allow this item of CAD 336.

Driving Lessons The wife is claiming CAD 450 per month for S's driving lessons. The husband argues that it is not really necessary for S to learn driving as her present home is really close to the college. I think the husband is a bit too harsh on this item. We all know that unlike Hong Kong, commuting by private vehicle is rather common in western societies, especially in countries like Canada and the US. Youngsters at the age of 16 or 17 obtaining driving licenses are not really that uncommon. Therefore, I have no hesitation in allowing this item, except the quantum. I see that the wife is claiming this as a monthly expense which cannot be allowed as S's maintenance up to the year of 2018. I would give her 6 months to obtain the driving license and therefore, I would only allow her a lump sum of CAD 2,700 ($\text{CAD } 450 \times 6 = \text{CAD } 2,700$).

Conclusion on S's Reasonable Monthly Expenses By way of conclusion, I would allow the followings as S's reasonable monthly expenses:

Items	Amount
Home stay	CAD 1,000
Food	CAD 500
Transport	CAD 100
Pocket money	CAD 300
Medical Service Plan	CAD 66.50
Holidays	CAD 200
Personal Grooming	CAD 150
Telephone/TV/internet charges	CAD 116.31
Mobile fee	CAD 81.68
Entertainment/presents	CAD 100
English lessons	CAD 240
French lessons	CAD 360
Rental fee for piano	CAD 60
Piano lessons	CAD 336
Miscellaneous	CAD 100
Total:	CAD 3,710.49

For the sake of convenience, I would round up the figure to CAD 3,800. If one should convert that amount into Hong Kong currency, the husband's financial responsibility towards S would be about HK\$ 28,120 ($\text{CAD } 3,800 \times 7.4 = \text{HK\$ } 28,120$) per month, or HK\$ 337,440 per year. If one should also take into account the school fees or related expenses payable under the husband's undertakings, the husband's annual financial responsibility will be close to HK\$ 500,000 or even more. Looking at the matter in the round, I would say that it is fair to expect the husband to shoulder that level of financial responsibility under the present circumstances of the case. I will also allow an annual upward adjustment of 3% to reflect inflation. I only allow a lower rate for inflation as I understand that the inflation rate in Canada is lower than Hong Kong. I will also allow a lump sum of CAD 2,700 for S's driving lessons.

Amount of Reimbursement Payable by the Husband By way of supplemental submission by letter dated 6 June 2013, counsel for the wife has summarized her claim for reimbursement of S's expenses as follows:

Description (between 12/2012 and 3/2013)	Amount
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- (a) Monthly maintenance CAD 26,000 ($\text{CAD } 6,500 \times 4$)

- (b) School Fee (1st Term) including CAD 3,445.76 Application fee, student association fee, service charge and confirmation of enrollment
- (c) School book CAD 640.83
- (d) Medical Insurance per annum CAD 798 CAD 30,884.59 (@7.97 as at 1/2013) = HK\$246,150.18
- (e) Air ticket- round trips HK\$ 17,566 Total: HK\$ 263,716.18 Less
- (1) Monthly maintenance paid HK\$ 36,000 by the husband [(HK\$7,000+2,000)x4]

(2) Advance payment on 23 January 2013 HK\$55,000 Total Amount Outstanding: HK\$ 172,716.18

It seems that the wife has tried to reformulate her claim for reimbursements as the above calculations were different from the figures contained in her previous affirmations (see A3/691-2, A3/726). Be that as it may, as those are the latest figures quoted by counsel, I will approach to assess the reasonableness of those figures instead of the figures as contained in the affirmations. The Husband's Objections As can be seen at paragraphs 57-71 of counsel's final submissions, many of the husband's objections mainly centered on the figures as quoted in the wife's previous affirmations, which are no longer relevant after the reformulation of the wife's claim. Therefore, I will only concentrate on those remaining relevant challenges in the following discussion. Monthly Maintenance of CAD 26,000 As I have already ruled that the reasonable monthly maintenance for S should be CAD 3,800 per month, that should also apply to the reimbursement claim. Therefore, I will allow CAD 15,200 (CAD 3,800 x 4 = CAD 15,200) for the period from December 2012 to March 2013 as S's maintenance. Air ticket-round trips It is the husband's contention that there was no need for the wife to go to Canada with S who was an adult at the time. He also complained that it was not reasonable for the wife not to consult him before taking on this trip and later demanded reimbursement. Although I agree that it was not unreasonable for the husband to demand prior consultation of the wife's proposed trip to Canada with S, after considering the fact that S was going to settle in a new environment at the beginning of a new school term and the relative modest sum involved, I would allow the wife's air ticket this time. However, I must warn the wife that such kind of approval might not be forthcoming in the future. Other Items I understand that the other items include school fees, school related expenses and medical insurance were not seriously challenged by the husband. I will allow them in full.

Conclusion on Reimbursement By way of conclusion, I will allow the following reimbursements: Monthly maintenance CAD 15,200 (CAD 3,800 x 4)

- (b) School Fee (1st Term) including CAD 3,445.76 Application fee, student association fee, service charge and confirmation of enrollment
- (c) School book CAD 640.83
- (d) Medical Insurance per annum CAD 798 CAD 20,084.59 (@7.97 as at 1/2013) = HK\$160,074.18
- (e) Air ticket- round trips HK\$ 17,566 Total: HK\$ 177,640.18 Less

- ## Orders

- (1) The maintenance order in favour of the wife shall be varied upward from nominal maintenance to a monthly sum of HK\$18,000 payable on the 1st day of every month, starting from 1 May 2013 for a period of 5 years, such sum to be adjusted upward at an annual rate of 5%.
- (2) The maintenance order in favour of the daughter shall be varied from the monthly sum of HK\$5,000 to a monthly sum of CAD 3,800 payable on the 1st day of every month starting from 1st April 2013 until the daughter finishes her first degree or May 2018, whichever is the earlier, such sum to be adjusted upward at an annual rate of 3%.
- (3) The husband shall pay a lump sum of HK\$86,640.18 as reimbursement of the wife and daughter's expenses from December 2012 to March 2013.
- (4) The husband shall pay a lump sum of CAD 2,700 for S's driving lessons.
- (5) All the above payments shall be paid into a bank account designated by the wife. Costs I see that the wife only succeeds in part of her applications and I would therefore order the husband to pay half of the costs of the wife, including all costs reserved, on a party and party basis and to be taxed if not agreed with certificate for counsel. This will be in the form of an order nisi to be made absolute after the expiry of 14 days from the handing down of this judgment. C.K. Chan District Judge Representation: Mr Frederick Fong, instructed by Messrs Damian Shea & Co, for the Petitioner Mr Ernst Cheung, instructed by Messrs Raymond Chan, Kenneth Yuen & Co, for the Respondent

[2008] HKFLR 106 PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L
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gdq` tJ07\$`L'6 gdq` gdIZW gdq` gdq` gdq` gdq` gdq` gdq` p^JpJpJp9pJ hIZW hIZW
gdq` gdq` gdq` gdq` gdq` gdq` gdq` hIZW hIZW hIZW hIZW h%oc gdq` gdq` gdq` gdq`
gdq` gdq` gdq` qY>Y h%oc h%oc h%oc h%oc gdq` gdq` gdq` gdq` _G_G_h)in u[F]/
v^Iv2vIvIvI |gNg|9g _I_I4I gdq` gdq` gdq` gdq` hs)% hs)% gdq` gdq` gdq` M8M8M gdq`
gdq` gdq` gdq` zezezezezezezezeze hs)% hs)% {{f{f{N hs)% gdq` gdq` gdq` gdq`
w_G_1 bMbMb u[G]G] h<Xj h<Xj h<Xj gdq` gdq` gdq` v^vH3H3H h<Xj h<Xj hh G h<Xj gdq`
gdq` gdq` hh G h<Xj iS=SiS hh G hh G |fQfQf}hP:h:h hh G hh G hh G h<Xj eLeL4Le hh G
hh G gdq` gdq` gdq` u`u`uJu`uJu ~fPf gdq` gdq` gdq` hRh~h xbxMxMx gdq` gdq` gdq`
gdq` gdq` gdq` gdq` x`xJ zbzL7L ha\$x ha\$x ha\$x ha\$x ha\$x gdq` gdq` gdq` gdq` gdq` gdq`

gdq` ha\$x ha\$x ha\$x ha\$x ha\$x ha\$x ha\$x gdq` gdq` gdq` gdq` gdq` `vKv0v0 gdgK gdq`
gdq` gdq` gdq` r\_L\_LrB>5 &`#\$ h:X1 h:X1 [Content_Types].xml Iw}, \$yi} _rels/.rels theme/
theme/themeManager.xml K Y, sQ}# theme/theme/theme1.xml w toc'v)I`n 3Vq%`#q x}r :
\TZaG I u3 L+M2 e\O* \$*c?)6-r IqbJ#x ,AGm T[XF64 E)` # R>QD =(K& =al- 4vfa 0%M0 theme/
theme/_rels/themeManager.xml.rels 5 6?\$Q K(M&\$R(.1 [Content_Types].xmlPK
_rels/.relsPK theme/theme/themeManager.xmlPK theme/theme/theme1.xmlPK theme/
theme/_rels/themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8"
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accent6="accent6" hlink="hlink" folHlink="folHlink"/> [5? (;2a" U7<> J @D KWE" 'Z\2a" [5?
(U7<> &'L- x2XQ Draft dc_reporter08 Normal.dotm Judiciary Microsoft Office Word Dell
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schemas.openxmlformats.org/officeDocument/2006/bibliography"/></ds:schemaRefs></
ds:datastoreItem> Microsoft Office Word 97-2003 Document MSWordDoc
Word.Document.8

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